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In the Supreme Court of the United States

OCTOBER TERM, 1979

JEANINE R. SMITH, PETITIONER

v.

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 597 F. 2d 152. The order and judgment of the district court (Pet. App. B) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 9, 1979. A petition for rehearing was denied on June 4, 1979. On August 10, 1979, Mr. Justice Rehnquist extended the time within which to file a petition for a writ of certiorari to and including September 14, 1979, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 1631(b) of the Social Security Act prohibits the posthumous payment of unpaid Supplemental Security Income benefits, for a period before the death of an SSI beneficiary, to a representative payee other than the beneficiary's eligible spouse.

STATEMENT

Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, established the Supplemental Security Income (SSI) program for the Aged, Blind, and Disabled. The statute was enacted to replace several cooperative federal-state programs with a single uniform system of welfare benefits administered by the Secretary of Health, Education, and Welfare. The program guarantees a monthly income to persons who meet federally prescribed income levels and other eligibility criteria.

On January 1, 1974, petitioner's husband, with the assistance of the Sacramento County Welfare Department, placed petitioner's grandmother, Rosette V. Guidet, in Holbert House, a board and care facility for the aged and infirm. All parties concerned assumed that Guidet would be eligible to receive SSI benefits to pay the cost of her board and care (Pet. App. A-2 & n.1). Petitioner's husband signed the admissions agreement, which provided for a monthly advance payment of $250.

On January 25, 1974, petitioner, on Guidet's behalf, contacted the Social Security Administration (SSA) district office and initiated the application process for SSI benefits. A written application was submitted on February 7, 1974. SSA had not finished processing the application, and had not made any eligibility determination, when Guidet died on March 6, 1974 (Pet. App. A-2). SSA then denied payment (*ibid.*) on the ground that

> Section 1631(b) of the Social Security Act [42 U.S.C. §1383(b)] provides that money due a supplemental security income recipient who dies may be paid only to the deceased individual's surviving husband or wife who was also a supplemental security income recipient in the month the deceased individual died. If there is no such surviving husband or wife, the payments due the deceased recipient cannot be made to anyone.

After a hearing held at petitioner's request, an administrative law judge concluded that Guidet's benefits for January and February 1974 should be paid either to Holbert House or " 'to another appropriate representative payee' " (Pet. App. A-3).[1] The administrative law judge reasoned that, despite the apparent prohibition in Section 1631(b), Section 1631(a)(2) of the Act authorizes posthumous payments to a representative payee " 'to reimburse * * * for necessaries furnished to the deceased applicant during the period for which the benefits are due, if such necessaries were provided in reasonable reliance on the needy applicant's future payment for such necessaries out of supplemental security income payments' " (Pet. App. A-3).

On its own motion, SSA's Appeals Council reviewed the administrative law judge's decision. See 20 C.F.R. 416.1463, 416.1465. Relying on Section 1631(b) and 20

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[1]Although Guidet's formal application was not filed until February 1974, she could have been eligible for benefits for January as well, if, as apparently happened, petitioner filed a written statement in January indicating an intention to claim SSI benefits for her grandmother and then followed that statement by submitting a formal application within 30 days of receiving notice from the SSA that such an application was required. See 20 C.F.R. 416.335; 42 U.S.C. 1382(c); 20 C.F.R. 416.325(b), 416.501.

C.F.R. 416.542(b),[2] the Appeals Council rejected the argument that a posthumous payment could be made to a representative payee. The Appeals Council explained (Pet. App. A-3):

> Where an individual has died, there can be no payment to her even through a representative payee. * * * [U]nder Section 416.601(b) of the Regulations [*i.e.*, 20 C.F.R.], payment to a representative payee constitutes payment to an eligible individual. * * * [H]owever, it is evident from Section 416.601(a) that payment through a representative payee is contemplated only where the eligible individual is living.

Accordingly, the Appeals Council reversed the administrative law judge's ruling and held that no SSI payments could be made to petitioner or Holbert House.

Petitioner then filed this suit in the United States District Court for the Eastern District of California. See 42 U.S.C. 1383(c)(3), 405(g). On cross motions for summary judgment, the district court ruled in favor of the Secretary (Pet. App. B).

The court of appeals affirmed (Pet. App. A). The court stated that, on its face, Section 1631(b) of the Social Security Act permits the Secretary to make belated payments of benefits past due only to an SSI beneficiary or his eligible spouse. The court further observed that the

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[2]20 C.F.R. 416.542(b) provides in pertinent part:

> If a recipient dies before the amount due him has been paid to him, * * * the amount of the underpayment may be paid only to his surviving spouse * * *. No underpayment may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than the living-with eligible spouse.

Appeals Council's interpretation of this provision to prohibit posthumous payments to a beneficiary's representative payee is supported by the statute's legislative history and by the regulations and consistent practice of the agency responsible for the statute's administration (Pet. App. A-5 to A-7 & n.7).

Judge Merrill dissented (Pet. App. A-12 to A-14). He took the position that the Secretary's construction of Section 1631(b) is inconsistent with the purposes of the SSI program because it deprives beneficiaries of the ability to secure credit for necessary care on the basis of a present entitlement to benefits. Judge Merrill stressed that, notwithstanding the apparent limitation contained in Section 1631(b), the Secretary frequently makes adjustments for underpayments by paying a beneficiary's representative payee (rather than the beneficiary himself or his eligible spouse) during the beneficiary's lifetime. In Judge Merrill's view, if Section 1631(b) does not prohibit this practice, it also should not preclude payment to a representative payee after the beneficiary's death, as long as the Secretary is assured that such posthumous payment will be used to pay for necessary care furnished to the beneficiary while living and will not simply go to the estate of the deceased recipient, where it would presumably be subject to the claims of general creditors.

ARGUMENT

The decision of the court of appeals, which involves solely a question of statutory interpretation, is correct and does not conflict with the ruling of any other court. Further review is not warranted.

1. As the court of appeals recognized, the language of Section 1631(b) of the Social Security Act is "clear on its face." The statute provides in pertinent part:

> Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall * * * be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either).

Under this provision, belated payments of benefits past due may be made only to an eligible spouse,[3] when the person initially entitled to the benefits is deceased.[4] When

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[3]By permitting a surviving eligible husband or wife to receive an adjustment in SSI benefits to rectify an earlier underpayment to a spouse who died before the mistake could be corrected, Congress sought to avoid inequities that might arise under the statutory scheme setting the appropriate SSI benefit level for married couples in which both partners are eligible for federal welfare assistance. Section 1611(b) of the Social Security Act, 42 U.S.C. 1382(b), sets the standard annual SSI benefit level for "an individual who does not have an eligible spouse" at $1,752; the comparable figure for "an individual who has an eligible spouse" is $2,628. Under the Secretary's regulations (20 C.F.R. 416.502), the monthly installment amount for an eligible couple ordinarily will be divided equally and paid in separate checks to each individual. Thus, as a general rule, each spouse in an eligible couple will receive SSI benefits at a rate lower than he or she could expect as an unmarried beneficiary. The statutory plan is that part of the benefits paid to each such spouse will be used for the support of the other. In a real sense, therefore, an underpayment to one spouse in an eligible couple is an underpayment to the other as well. Accordingly, Congress acted rationally in deciding that, after the death of one partner in an eligible couple, the surviving spouse should be permitted to recover past due benefits to which the deceased spouse was entitled at the time of death.

[4]Unlike the SSI welfare program, the Social Security Act's old-age, survivors', and disability insurance program establishes a priority listing of survivors entitled to receive adjustments for benefits past due at the time of a beneficiary's death and then provides that, in cases where a beneficiary dies without leaving one or more qualified survivors, any unpaid benefits shall be paid to his estate. 42 U.S.C. 404(a)(2), (d). This provision in Title II of the Social Security Act demonstrates that Congress speaks explicitly when it intends to authorize numerous classes of survivors to receive posthumous adjustments of earlier underpayments.

the beneficiary himself is alive, adjustments for underpayments are, of course, made directly to him, unless he is mentally incompetent or otherwise unable to handle his financial affairs. When it appears to the Secretary that a beneficiary's interests will be served by the payment of SSI benefits to a third party concerned with the beneficiary's welfare, the Secretary may make payments to a so-called "representative payee." See 42 U.S.C. 1383(a)(2); 20 C.F.R. 416.601 *et seq.* In such cases, the representative payee stands in the place of the beneficiary. While the beneficiary is alive, the payee receives the beneficiary's regular payments and any adjustments for underpayments to which the beneficiary is entitled. Payment to the payee is equivalent to payment to the individual beneficiary. When the beneficiary dies, however, no more payments of any kind can be made to him or, as a logical consequence, to his legal substitute, the representative payee. Since the payee is simply a surrogate for the individual beneficiary, he can receive no payments unless the beneficiary himself is in a position to receive payments. When the beneficiary dies, the payee's status as such automatically terminates.

This explains why there is no merit to petitioner's argument (Pet. 8-11) that SSI benefits owed to her grandmother for January and February 1974 should have been paid to a representative payee after Guidet's death. The representative payee only substitutes for the individual beneficiary. When Guidet died in March 1974,

she could no longer receive benefits for January and February. Her representative payee, assuming one had been properly designated under the Secretary's regulations, was therefore similarly disabled. Contrary to petitioner's contention (Pet. 12-14), 20 C.F.R. 416.601(b) does not support her position. The regulation simply states that "[p]ayments made * * * to a representative payee of an eligible individual * * * shall constitute payments to such eligible individual * * *." But, after Guidet's death, she was no longer entitled to SSI payments. Nothing in the Secretary's regulations suggests that the agent's entitlement should outlast that of the principal.

2. The legislative history of Section 1631(b) supports the Secretary's interpretation of the statute. Both the House and Senate Reports contain the following statement:

> [I]f less than the correct amount of benefits had been paid, the Secretary would pay the balance due to the underpaid individual. If the individual dies before the amount due has been paid to him, or before he negotiates the check representing the correct payment, the amount due would be paid to his eligible spouse, if there is one, and the payment would not be taken into account in determining the spouse's need under this program. *Underpayments, however, would not be paid to the estate of a deceased individual since that would not further the objective of meeting the current needs of individuals.* Overpayments, on the other hand, could be recovered from the estate of a deceased individual.

H.R. Rep. No. 92-231, 92d Cong., 1st Sess. 155 (1971); S. Rep. No. 92-1230, 92d Cong., 2d Sess. 391 (1972) (emphasis added). The Secretary's regulation prohibiting

the payment of past due benefits to any survivor of the beneficiary other than the eligible spouse (see 20 C.F.R. 416.542(b); note 2, *supra*) properly implements the provisions of Section 1631(b), as explained in the congressional committee reports. The Secretary's interpretation of the statute (and of her own regulations) "should be followed unless there are compelling indications that it is wrong * * *." *E.I. du Pont de Nemours* v. *Collins*, 432 U.S. 46, 54-55 (1977). See also *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965); *Northern Indiana Public Service Co.* v. *Porter County Chapter of the Izaak Walton League*, 423 U.S. 12 (1975).

3. Petitioner argues (Pet. 16), however, that denying posthumous payments to representative payees "rewards" the Secretary for delay in processing applications[4] and deprives eligible applicants of the ability to secure credit on the basis of their asserted present entitlement to SSI benefits. Such complaints are properly addressed to Congress. The current version of Title XVI of the Social Security Act reflects a deliberate legislative decision that federal welfare benefits should be used only to meet the current needs of eligible individuals and their eligible spouses, not to repay third parties for expenditures advanced before a beneficiary's death. If SSI payments are to be used for additional purposes, Congress must make that decision.

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[4]There is no suggestion in this case that SSA unreasonably delayed in processing Guidet's SSI application. Nor would there be any significiant administrative incentive for such delay. Once an application for SSI benefits is granted, benefits are paid retroactively to the beginning of the month in which the application was filed. See note 1, *supra*. It strains credulity to suggest that SSA would deliberately delay the processing of an SSI application solely on the chance that the prospective beneficiary might die before an eligibility determination could be completed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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